

ATTACHMENT H

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

**83 ILLINOIS ADMINISTRATIVE CODE
PART 300
GUIDELINES FOR RIGHT-OF-WAY ACQUISITIONS
(General Order 226)**

TITLE 83: PUBLIC UTILITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER b: PROVISIONS APPLICABLE TO MORE THAN
ONE KIND OF UTILITY

PART 300
GUIDELINES FOR RIGHT-OF-WAY ACQUISITIONS
(GENERAL ORDER 226)

Section

- 300.10 Certificate of Public Convenience and Necessity
- 300.20 Informational Packet
- 300.30 Negotiation of the Acquisition of a Land Right-of-Way Easement
- 300.40 Application of this Part
- 300.50 Revocation of Existing Certificate
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APPENDIX A Statement of Information from the Illinois Commerce Commission Concerning
Acquisition of Rights-of-Way by Illinois Utilities

AUTHORITY: Implementing Sections 50, 55 and 59 and authorized by Section 8 of "An Act concerning public utilities" (Ill. Rev. Stat. 1981, ch. 111 ²/₃, pars. 50, 56, 63 and 8).

SOURCE: Adopted at 7 Ill. Reg. 339, effective December 23, 1982; codified at 8 Ill. Reg. 12182.

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Section 300.10 Certificate of Public Convenience and Necessity

Whenever any public utility seeks to negotiate the acquisition of a land right-of-way easement involving a project which requires a certificate of public convenience and necessity under Section 55 of the Illinois Public Utilities Act (Ill. Rev. Stat. 1981, ch. 111 $\frac{2}{3}$, par. 56) or an Order under Section 50 of said Act (Ill. Rev. Stat. 1981, ch. 111 $\frac{2}{3}$, par. 50), this Part shall apply.

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Section 300.20 Informational Packet

Prior to any public utility or its agent initiating contact with any landowner (*the record owner of the land as disclosed by the records of the Tax Collector of the county wherein the land is located*) to negotiate the acquisition of a land right-of-way easement, it shall file with the Illinois Commerce Commission an informational packet consisting of, but not necessarily limited to, a brief description of the purpose of the project, type of facility proposed to be constructed, size of site or width of right-of-way being sought and, in the case of a transmission line, its expected origin and terminus points.

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Section 300.30 Negotiation of the Acquisition of a Land Right-of-Way Easement

This Section shall govern the actions of every person acting in behalf of a public utility when negotiating the acquisition of a land right-of-way easement:

- a) At least 14 days prior to the utility initiating telephone or personal contact with the landowner for the purposes of negotiating the acquisition of a land right-of-way easement, the utility representative shall send to the landowner a letter by certified mail return receipt requested containing the information set forth below together with the "Statement of Information from the Illinois Commerce Commission Concerning Acquisition of Rights-of-Way by Illinois Utilities" (attached hereto as APPENDIX A).
- b) The utility representative shall keep and maintain a permanent record of letters sent in compliance with this Section.
- c) The letter sent by the utility representative shall be on that representative's letterhead or on the letterhead of the utility and shall clearly set forth:
 - 1) The identity, address and telephone number of the utility representative;
 - 2) The identity of the utility attempting to acquire the land or land rights;
 - 3) The general purpose of the proposed project;
 - 4) The type of facility to be constructed;
 - 5) The general description of the land or land rights the utility seeks to acquire and the type of structures, if any, which the utility seeks to build;
 - 6) A statement that the utility or its representative seeks to negotiate with the landowner to arrive at a fair and reasonable agreement for such land or land rights; and
 - 7) An invitation to the landowner to contact the utility representative to arrange a mutually agreeable time for an appointment to further discuss the matter.
- d) If the landowner does not contact the utility representative within two weeks of the mailing of the original letter, that representative may then contact the landowner to attempt to establish a mutually convenient time and date for a meeting to discuss the matter.
- e) Each utility representative shall carry with him/her and show to every landowner contacted an identification card showing the name and address of the contacting person, his/her employer, and a recent picture of such person. The contacting person shall leave his/her telephone number with the landowner.
- f) Upon the initial personal contact with the landowner, each utility representative shall be prepared to discuss the project for which a land right-of-way is sought in detail, and more specifically inform and advise the landowner in the manner stated, of the following:
 - 1) By oral statement concerning the reason for the contact, i.e., general purpose of the proposed project, type of facilities to be constructed

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- 2) Provide technical information and data surrounding the proposed project. This should include, amongst other things, to the extent then known to the utility, a written statement outlining briefly the purpose of the project, a small scale map and sketches indicating type(s) of facility, approximate location of facilities, compensation and basis for compensation and, if applicable, type of structures, and amount (length and width) of the land right-of-way deemed necessary. This information shall be left with the landowner for review, along with any agreement or contract proposed by the utility.

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Section 300.40 Application of this Part

This Part shall be prospectively applied. The Part shall not affect the following:

- a) The validity of any existing Commission certificate.
- b) The validity of any easement or subsequent Order of the Commission under Section 50 of the Illinois Public Utilities Act (Ill. Rev. Stat. 1981, ch. 111 ½, par. 50).

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Section 300.50 Revocation of Existing Certificate

This Part shall not cause the revocation of any existing Commission certificate.

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Section 300.60 Railroad Company

This Part shall not apply to a railroad company seeking to exercise the power of eminent domain under Section 17 of "An Act to provide for the incorporation of associations that may be organized for the purpose of constructing railways, maintaining and operating the same; for prescribing and defining the duties and limiting the powers of such corporations when so organized; and authorizing the same and all railroad companies of this state to own and hold the stock and securities of railroad companies of other states owning connecting lines" (Ill. Rev. Stat. 1981, ch. 114, par. 18).

Section 300.70 Variance

The Commission, on application of a utility or on its own motion, may grant a variance from this Part in individual cases where the Commission finds that:

- a) The provision from which the variance is granted is not statutorily mandated;
- b) No party will be injured by the granting of the variance; and
- c) The rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome.

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Section 300.APPENDIX A Statement of Information from the Illinois Commerce Commission Concerning Acquisition of Rights-of-Way by Illinois Utilities

A representative of a public utility is contacting you for the purpose of negotiating with you concerning the acquisition of a land right-of-way for utility purposes over property which you own or in which you have an interest as an owner. This right-of-way is proposed to be used for the purpose of constructing, operating and maintaining certain facilities of the utility on your land, as set forth in the accompanying letter. This project will be further explained in detail to you by the utility representative who meets with you concerning this proposal.

The purpose of this Statement is to provide you with general information concerning the initial procedures involved. This Statement covers several questions commonly asked of the Illinois Commerce Commission staff by landowners.

This Statement is not a legal opinion concerning your rights under the law or the rules and regulations of the Commission nor is it a detailed analysis of the procedures involved. If you have any questions concerning your legal rights, you may wish to consult an attorney.

Ordinarily, a public utility must obtain a Certificate of Public Convenience and Necessity from the Illinois Commerce Commission under Section 55 of the Illinois Public Utilities Act (Ill. Rev. Stat. 1981, ch. 111 ½, par. 56) before constructing major new facilities. An order pursuant to Section 55 allows a utility to begin construction on land which it owns or on which it has acquired an easement. The utility files its application with this Commission for the Certificate, and the Commission then notifies the property owners involved of the date, time and place of the public hearing to be held by the Commission on the utility's application. Landowners may participate in the hearing(s) either through oral or written statements, or formal intervention as provided in the Commission's Rules of Practice (83 Ill. Adm. Code 200). During such hearing(s), the Commission considers the public need for the proposed project, the type of facilities to be constructed and the feasibility of the proposed location of the facilities. If the Commission finds that the proposed facility is reasonably needed to provide utility service to the public and approves of its design and location, the Commission will grant a Certificate of Public Convenience and Necessity to the utility for the construction of the facilities.

A utility may choose to seek to acquire land or land rights from landowners prior to seeking a Certificate from the Commission. The utility may also seek to obtain an option to purchase a right-of-way from a landowner. The securing of an option does not oblige the utility to purchase the right-of-way. During the negotiations, you may be represented by an attorney. However, you are under no obligation to retain anyone to negotiate on your behalf.

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Negotiation means discussion and bargaining between the landowner and the utility in an effort to arrive at an equitable agreement concerning the land or land rights and the price to be paid for such land or land rights. It does not mean that an agreement must be reached or that either the landowner or the utility must agree with the other. The Commission does not require the utility to obtain by negotiation any fixed amount or percentage of the right-of-way required for the project prior to its applying for a Certificate.

The price to be paid to the landowner by the utility for the land or land rights is a matter of negotiation between the landowner and the utility. The Commission does not participate in the negotiations nor does it establish or approve the price. Specific information on the price to be offered for the land or land rights will be provided by the utility representative.

The utility representative may be negotiating with you for the acquisition of an easement for the use of the land or for the purchase of the land. In either case, the utility will have its own form of easement or deed, as the Commission has no standard forms which the utility is required to use.

If the utility is able to obtain a Certificate of Public Convenience and Necessity for the project and has been unable to acquire the necessary land or land rights from all landowners through negotiation, it may apply to the Commission for an order under Section 50 of the Public Utilities Act (Ill. Rev. Stat. 1981, ch. 111 2/3, par. 50). An order pursuant to Section 50 finds that the project is in the public interest and authorizes and directs the project to be built. The Commission will notify the interested landowners from whom the utility has not been able to acquire the necessary land or land rights through negotiation, of the date, time and place of the public hearings to be held by the Commission on the utility's application. Such landowners may participate in the hearing(s), either through oral or written statements, or formal intervention as provided in the Commission's Rules of Practice. During such hearing(s), the Commission determines, among other things, whether the utility had made a reasonable attempt to acquire the necessary land or land rights through negotiation with the landowner.

If the Commission grants the utility an order under Section 50 of the Public Utilities Act (Ill. Rev. Stat. 1981, ch. 111 2/3, par. 50) and the utility still has not been able to acquire the necessary land or land rights through negotiation, the utility may then apply to the courts to exercise the right of eminent domain or condemnation under Chapter 7, "Eminent Domain," of the Code of Civil Procedure (Ill. Rev. Stat. 1981, ch. 110, pars. 7-101 et seq.) to acquire the right-of-way. Eminent domain is simply the power of the State, or those delegated by the State, to take private property for public use upon payment of just compensation as determined by the courts.

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There is no certainty that the utility will be allowed to acquire land or land rights through the use of eminent domain. However, you should not delay in contacting the utility's representative to attempt to negotiate fair compensation for the land or land rights which the utility seeks. The Commission encourages you to negotiate vigorously on your own behalf or to have an attorney do so for you.

If you have any questions about this Statement or the rules and procedures of the Illinois Commerce Commission, please contact the Chief Engineer, Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, Illinois 62706. Any specific questions concerning your individual property should be addressed to the utility representative.

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ATTACHMENT I

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

83 ILLINOIS ADMINISTRATIVE CODE
PART 305
CONSTRUCTION OF ELECTRIC POWER AND
COMMUNICATION LINES
(General Order 160)

TITLE 83: PUBLIC UTILITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER b: PROVISIONS APPLICABLE TO MORE
THAN ONE KIND OF UTILITY

PART 305
CONSTRUCTION OF ELECTRIC POWER AND
COMMUNICATION LINES

Section	
305.10	Policy
305.20	Scope and Incorporation by Reference of Portions of the National Electric Safety Code (NESC)
305.30	General Rules
305.40	Application
305.50	Certificates of Public Convenience and Necessity
305.60	Notification Procedure for Applications
305.70	Advance Notice and Cooperation
305.80	Interchange Data
305.90	Coordinated Locations of Lines
305.100	Overbuilding or Underbuilding
305.110	Exceptions and Additions to NESC Provisions
305.120	Intent
305.130	Exemption
305.Table A	Vertical Separation of Crossarms Carrying Conductors

AUTHORITY: Implementing Section 8-505 and authorized by Section 10-101 of the Public Utilities Act (Ill. Rev. Stat. 1991, ch. 111 2/3, pars. 8-505 and 10-101) [220 ILCS 5/8-505 and 10-101].

SOURCE: Effective June 1, 1963; rules repealed at 8 Ill. Reg. 19750, effective October 1, 1984; new Part adopted at 8 Ill. Reg. 19943, effective October 1, 1984; amended at 9 Ill. Reg. 11803, effective July 25, 1985; amended at 16 Ill. Reg. 6180, effective April 25, 1992; amended at 17 Ill. Reg. 22043, effective February 15, 1994.

AMENDED

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Section 305.10 Policy

The purpose of this Part is the practical safeguarding of persons during the installation, operation, or maintenance of electric supply and communication lines and their associated equipment. It contains minimum requirements considered necessary for the safety of employees and the public.

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OCT 1 1984

SOS - ISL - CODE UNIT

Section 305.20 Scope and Incorporation by Reference of Portions of the National Electric Safety Code (NESC)

- a) This Part shall apply to electric utilities and those telecommunications carriers subject to Section 8-505 of the Public Utilities Act (Ill. Rev. Stat. 1991, ch. 111 2/3, par. 8-505) [220 ILCS 5/8-505].
- b) The Illinois Commerce Commission adopts as its rules the following portions of the National Electric Safety Code (1993 edition, approved July 10, 1992, published by the Institute of Electric and Electronic Engineers, 445 Hols Lane, P.O. Box 1331, Piscataway NJ 08855-1331):
 - 1) Section 2 (Definitions of Special Terms);
 - 2) Section 9 (Grounding Methods of Electric Supply and Communication Facilities);
 - 3) Part 2 (Sections 20-27: Safety Rules for the Installation and Maintenance of Overhead Electric Supply and Communication Lines); and
 - 4) Part 3 (Sections 30-39: Safety Rules for the Installation and Maintenance of Underground Electric Supply and Communication Lines).
- c) No incorporation in this Part includes any later amendment or edition.

(Source: Amended at 17 Ill. Reg. 22043 , effective February 15, 1994)

Section 305.30 General Rules

All electric supply and communication lines and equipment shall be designed, constructed and maintained to meet the requirements of this Part to enable service to be safe, adequate and dependable. For all particulars not specified in this Part, construction and maintenance should be done in accordance with accepted engineering practices for the given local conditions.

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SOS - ISL - CODE UNIT

Section 305.40 Application

a) New Installation and Extensions

These rules shall apply to all new installations and extensions, except that they may be waived or modified by the Illinois Commerce Commission. Instances of waiver or modification would include, but not be limited to, space limitations, temporary construction, or changes in technology. When the Commission waives or modifies these rules, it shall approve equivalent safety measures, including special working methods.

b) Existing Installations

1) Existing installations including maintenance replacements which comply with the Commission's rules which were in effect at the time of original installation need not be modified to comply with this Part except as may be required for safety reasons as directed by the Commission.

2) Where an existing installation meets, or is altered to meet, the requirements of this Part, such installation is considered to be in compliance with this Part and is not required to comply with any previously adopted rules of the Commission that have been superseded by this Part.

3) Where conductors or equipment are added, altered, or replaced on an existing structure, the structure or the facilities on the structure need not be modified or replaced if the resulting installation will be in compliance with:

A) The rules which were in effect at the time of the original installation;

B) The rules in effect at the time of a previous modification; or

C) The rules currently in effect.

c) Effective Date. This Part shall apply to new installations and extensions where design was started and approval given by the company after October 1, 1984.

(Source: Amended at ¹⁷ Ill. Reg. 22043 , effective February 15, 1994)

Section 305.50 Certificates of Public Convenience and Necessity

An application for a Certificate of Public Convenience and Necessity to construct, operate and maintain a new electric supply line or communication line shall be accompanied by a plat of suitable scale to clearly show:

- a) The location of the proposed line along its entire length.
- b) The location of railroad tracks, and electric supply and communication lines which will be crossed by the proposed new lines.
- c) The location of all other electric supply and communication lines that are located within one-half mile of the route of the proposed new line.
- d) The names of the utilities owning or operating railroads, electric supply and communication lines, shown on the plat in conformance with subsections (b) and (c) above.

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SOS - ISL - CODE UNIT

Section 305.60 Notification Procedure for Applications

Notice of the filing of an application for a Certificate of Public Convenience and Necessity to construct new line facilities or an application for authority to reconstruct, alter or remove existing line facilities shall be given by the applicant at the time of filing its application with the Commission to all other utilities whose lines will be crossed by the proposed new or reconstructed line facilities, or whose lines will be paralleled within 200 feet by such new or reconstructed line facilities. A list of all utilities to whom such notices were sent, including their addresses, shall accompany the application.

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SOS - ISL - CODE UNIT

Section 305.70 Advance Notice and Cooperation

- a) Railroad Crossings. An electric or communication utility planning to cross the tracks of a railroad, either overhead or underground, shall give notice of its intention to do so. Unless other mutual arrangements are made in conformity with Section 305.80, such notice shall be given by registered mail at least 20 calendar days in advance of the commencement of construction. Such notice shall include information regarding the location and general plan for the crossing, planned clearances, and such other pertinent information in sufficient detail to determine whether the proposed construction conforms with the requirements of this Part. In a case of emergency where the required notice would work a hardship on the company planning the crossing, the involved parties shall cooperate so as to avoid unnecessary delay in construction of the crossing.
- b) Overhead Line Crossing. An electric or communication utility planning a crossing over or under an existing line, or general reconstruction of an existing crossing, shall give notice of its intention to do so. Unless other mutual arrangements are made in conformity with Section 305.80, such notice shall be given by registered mail at least 20 calendar days in advance of the commencement of construction. All parties involved in such planned crossing construction or reconstruction shall cooperate in coordinating plans for future construction.
- c) Inductive Coordination.

Although the Commission has no specific rules covering inductive coordination, the Commission retains full jurisdiction of such matters as location, design, construction, operation and maintenance of power and communication circuits, where consideration of these or other conditions may be necessary in order to prevent or eliminate inductive interference.

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SOS - ISL - CODE UNIT

Section 305.80 Interchange Data

To assist in promoting conformity with these rules, a procedure or plan should be instituted between all utilities whose facilities may occupy the same territory so that it will provide for the exchange of pertinent data and information, including data relative to proposed and existing construction, and changes in operating conditions which may affect or be likely to affect situations of proximity.

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SOS-ISE-CODE UNIT

Section 305.90 Coordinated Locations of Lines

- a) General Location. Utilization of highways is essential to the economical and efficient extension, operation and maintenance of power and communication services. To avoid unduly increasing the number or difficulty of proximity situations incident to the use of the same highway by two or more different types or kinds of facilities, all lines should be located as follows: Where communication circuits and electric circuits on the same highway are not to occupy joint structures or where either kind of a circuit is alone on a highway, all communication circuits should be placed on one side of the highway and all electric circuits should be placed on the other side, so that one side of any section of a highway will be available as the communication side and one side as the power side.
- b) Other Rights-of-Way. Subsection (a) shall also apply to other rights-of-way. Situations should also be avoided whereby the reasonable use of parcels of property is restricted by the planned route traversing the property.

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SOS - ISL - CODE UNIT

Section 305.100 Overbuilding or Underbuilding

Overbuilding or underbuilding of one pole line by another pole line should be avoided. Where it is necessary for the lines to occupy the same side of the highway, the use of a single pole line is preferable.

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